

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MAURICE ROWE FIGUEROA

Plaintiff

vs

UNITED STATES OF AMERICA

Defendant

CIVIL 16-2099CCC

(Related Crim. 13-0534-03CCC)

OPINION AND ORDER

Before the Court is petitioner's *pro se* Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (**d.e. 1**) filed June 14, 2016. Petitioner seeks relief from his sentence in Criminal 13-0534-03 on the basis of Johnson v. United States, ___ U.S. ___, 135 S.Ct. 2551 (2015). Johnson held that the residual clause of the Armed Career Criminal Act at 18 U.S.C. § 924(e)(2)(B), which defines a "crime of violence" for the purposes of sentencing enhancement, was unconstitutionally vague.

The United States filed a Motion to Dismiss (**d.e. 4**) on July 21, 2016, alleging that Johnson is inapposite because petitioner was not sentenced under the Armed Career Criminal Act. The Federal Public Defender filed an Informative Motion (**d.e. 6**) on November 4, 2016 stating that defendant was not subject to the Armed Career Criminal Act and that he was not convicted of a crime of violence, and requesting leave to withdraw as counsel.

Having reviewed the above filings as well as Criminal 13-0534-03, the Court finds that petitioner pled guilty to Count One of the indictment, 21 U.S.C. §§ 841(a)(1), 846 and 860, conspiracy to possess with the intent to distribute at least five kilograms but less than 15 kilograms of cocaine within a thousand feet of a protected location, and Count 6, 18 U.S. C. § 924(c)(1)(A), unlawful

possession of a firearm in furtherance of a drug trafficking crime. While 18 U.S.C. § 924(c)(1)(A) does refer to crimes of violence, defendant was convicted and sentenced for a drug trafficking crime, not a crime of violence. As to Count 6, defendant was sentenced to the statutorily mandated minimum term of 5 years. He was not subject to a sentencing enhancement under the Armed Career Criminal Act. Accordingly, the ruling in Johnson did not affect any statutes under which petitioner was sentenced and has no application to his case.

For the reasons stated, the United States' Motion to Dismiss (**d.e. 4**) is GRANTED. Judgment shall be entered accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on August 1, 2019.

S/CARMEN CONSUELO CEREZO
United States District Judge